Decision 06-04-002 April 13, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SOUTHERN CALIFORNIA GAS COMPANY (U 904 G) for Approval of a Long-Term Gas Transportation Agreement with Guardian Industries Corp.	Application 05-10-010 (Filed October 7, 2005)

DECISION GRANTING APPROVAL OF A LONG-TERM GAS TRANSPORTATION AGREEMENT

Introduction

Southern California Gas Company (SoCalGas) seeks approval of a long-term gas transportation agreement (Agreement) with Guardian Industries Corp. (Guardian) on a firm basis.

Guardian currently operates a glass production facility in Kingsburg, California, that operates on fuel oil – not natural gas – and must either upgrade its Kingsburg facility to use clean-burning natural gas or relocate its manufacturing operation out of California. Guardian has performed an analysis of the costs of operating at its current location versus an alternate location in another state, and has established that the cost of doing business within California is higher than the cost of operating outside the state, with one of the key differentiators being rates for natural gas service.[1] A comparison of the gas service rates charged by SoCalGas and SoCalGas' out-of-state competitor demonstrates that the disparity in service costs is primarily the result of additional surcharges that SoCalGas is required to collect, which make gas service from SoCalGas significantly more expensive (i.e., surcharges of about 3.0¢/therm for SoCalGas compared to 0.2¢/therm for its out-of-state competitor).[2] The largest of these surcharges is the surcharge for gas public purpose programs (G-PPPs), which at 1.8¢/therm for this customer amounts to 31% of the total 5.9¢/therm rate charged to customers such as Guardian.

Rate/Cost Component	**SoCalGas Tariff Service**	**Alternative Location Tariff Service**	**Disparity (¢/therm)**
Fixed Charges[3] ($/month) (¢/therm average equivalent)	$350 0.02¢	$811 0.06¢	(0.04)¢
Average Transportation Rate (¢/therm)	2.9	2.7	0.2
Taxes, Fees & Surcharge (¢/therm)[4]	3.0	0.2	2.8
Total (¢/therm)	**5.9¢**	**3.0¢**	**2.9¢**

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[1] Guardian's cost comparison assessment was provided to the Commission under seal as Attachment 8 to the Testimony of Joseph Velasquez filed in support of the application.

[2] A comparison of the utility rates offered by SoCalGas and its out-of-state competitor was included as Attachment 9 to the Testimony of Joseph Velasquez.

[3] Fixed Charges for SoCalGas include Customer Charge. Fix Charges for Alternate Location include Basic Service Fee and Administrative Charge.

[4] Average Surcharges for SoCalGas include 1.8¢/therm in G-PPPS, 0.3¢/therm Interstate Transition Cost Surcharge (ITCS), 0.9¢/therm Municipal Surcharge. Average Surcharges for the alternative location include 6% for State Sales Tax and 6% for Municipal Energy Tax applied to the Fixed Charges and Volumetric Transportation Rate.

Guardian has made clear that the difference in the cost of transporting natural gas is a material factor in its decision whether to remain in California.[5] No party has challenged the showing made by SoCalGas that approval of the proposed discount is necessary to prevent Guardian's relocation out of state. The Agreement seeks to make SoCalGas' gas service rate competitive with the rate offered by SoCalGas' out-of-state competitor by (i) setting the rate at the applicable tariff rate, subject to an escalating ceiling rate and floor rate; and (ii) offering a five –year declining discount to the G-PPPs.[6] SoCalGas submits that the discounting of the G-PPP's cost component is appropriate in light of the fact that the G-PPP is the cost component that makes SoCalGas gas service rate uncompetitive when compared with those of SoCalGas' out-of-state competitor.

The Division of Ratepayer Advocates (DRA) opposes discounting the PPPS, and identifies the proposed discount as the sole issue in the application. DRA argues that the PPPS is mandatory under Pub. Util. Code § 890 *et seq.*;[7] therefore, we have no legal authority to discount the surcharge for any single gas customer.

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5 *See*, Affidavit of Peter S. Walters, Attachment 7 to the Testimony of Joseph Velasquez.

6 The gas service rate offered by SoCalGas remains slightly higher than that offered by SoCalGas' out-of-state competitor, even after application of the discount, but Guardian's acceptance of the Agreement signifies that the Agreement as a whole is sufficiently attractive, notwithstanding the slightly higher rate, to materially contribute to Guardian's decision to maintain its operation in California.

7 All statutory references are to the Public Utilities Code. Section 890 states, in part: ". . . there shall be imposed a surcharge on all natural gas consumed in this state. The commission shall establish a surcharge to fund low-income assistance programs. . . ."

The Utility Reform Network (TURN) opposes the SoCalGas proposal. It argues that a discount in the PPPS would contravene the long-standing Commission policy of collecting the costs of environmental and social surcharges such as those collected for the California Alternative Rates for Energy (CARE) program on an equal-cents-per-therm basis. It says, while the threat of Guardian leaving the state may indeed be serious, it does not justify altering this allocation policy when there are other alternatives readily available. In the past SoCalGas has agreed to several long-term transportation agreements that provided relief to companies threatening bypass by discounting the non-core transportation rate. TURN urges the Commission to maintain its policy of allocating the cost of social programs on an equal-cents-per-therm basis to all ratepayers and direct SoCalGas to modify the proposed agreement accordingly.

A prehearing conference was held November 15, 2005, at which time all parties agreed that a public hearing was not necessary and that the matter should be submitted upon the filing of briefs, which have been received.[8]

The Agreement

The Agreement has a 15-year term which sets the gas service rate at the applicable tariff rate, subject to an escalating ceiling rate and floor rate; and offers a five-year declining discount to the public purpose program surcharge. The Agreement provides additional contribution to margin (CTM). The net present value of the CTM to SoCalGas customers is estimated to range from $1.4 million to $3.5 million over the term of the Agreement, when discounted at the discount rate adopted by the Commission to evaluate the cost effectiveness of energy

[8] SoCalGas' Exh. 1, the public redacted testimony of Velasquez and Exh. 2, the public redacted testimony of Smith, are admitted.

efficiency programs.[9] In addition, Guardian will make escalating contributions to SoCalGas' G-PPPS over the lifetime of the Agreement. Guardian's G-PPPS contributions will escalate from $56,000 the first year of the Agreement to approximately $314,000 during year six and throughout the expiration of the Agreement. The net present value of the contributions to G-PPPS is estimated to be $1.8 million over the lifetime of the Agreement, when discounted at the discount rate adopted by the Commission to evaluate the cost effectiveness of energy efficiency programs.

The Public Benefit

SoCalGas claims, and neither DRA nor TURN disputes, that approval of the Agreement will preserve approximately 300 manufacturing jobs in the San Joaquin Valley, an area of the state already burdened by a high unemployment rate. SoCalGas asserts that the unemployment rate in the four counties of the San Joaquin Valley that are served by SoCalGas has consistently been 300 to 500 basis points higher than the average unemployment rate in California. This makes Guardian, which offers its employees stable, non-seasonal employment (notable in this area of the state where much of the employment is seasonal due to a heavy concentration of agricultural businesses) and wages that are above-average for the area, a valued member of the business community. In addition to the direct benefits conferred upon Guardian employees, Guardian's Kingsburg operation adds approximately $58 million per year into the state economy, consisting of payroll, purchases from California based suppliers, and sales and property taxes. The State of California and local communities also benefit from

[9] The net present value was calculated using 7.49%, which is the factor adopted by the Commission to evaluate the cost effectiveness of energy efficiency programs.

the taxes paid by Guardian's employees, as well as from the economic activity generated in the communities where the approximately 300 Guardian employees purchase products and services for their families.

By converting from fuel oil to natural gas at its Kingsburg site, Guardian will significantly reduce air pollution emissions, a key objective of this Commission's own Energy Action Plan. Based on permitted emissions by the San Joaquin Valley Air Pollution Control District, emissions of oxides of nitrogen (NOx) will be reduced by 67% or 855 tons per year and emissions of oxides of sulfer (SOx) will be reduced by 75% or 460 tons per year. A study performed by Guardian indicates that converting to natural gas will allow it to significantly reduce emissions, even while increasing production: with a 33% increase in glass production, emissions of NOx decrease 46% or 353 tons per year, SOx decrease 63% or 262 tons per year, and CO_2 decrease by 18% or 21,000 tons per year.

Pub. Util. Code § 890 *et seq.*

DRA argues that § 890 is clear that all California gas consumers must pay the PPP surcharge. Because the legislature directs the PUC to set surcharge rates for all natural gas consumers and orders utilities to collect them from each natural gas customer, all consumers, including those from interstate pipelines, must pay the surcharge, without discount. It quotes § 890(a), "On and after January 1, 2001, there *shall* be imposed a surcharge on *all natural gas consumed* in this state. The commission shall establish a surcharge to fund low-income assistance programs . . ." *Id*. (DRA emphasis added.) Section 890(b) continues with, "a public utility gas corporation . . . *shall* collect the surcharge imposed pursuant to subdivision (a) from *any person consuming* natural gas in this state who receives gas service from the public utility corporation." *Id.* (DRA emphasis added.) Section 890(c) imposes the surcharge on interstate pipeline consumers by stating that *"all persons consuming natural gas* that has been transported by an interstate pipeline … *shall* be liable for the surcharge imposed pursuant to subdivision (a)." *Id.* (DRA emphasis added.) DRA concludes that it is evident from the above sections that all natural gas consumers in California must fund the public purpose programs.

Nor, in DRA's opinion, does the Commission have discretion to set or discount individual surcharge rates. Citing Section 890(e): "The Commission *shall* annually establish a surcharge rate for each class of customer for the service territory of each public utility gas corporation." (DRA emphasis added.) DRA claims that § 890(e) mandates the Commission to set surcharge rates per class of customers and not for individual customers. Finally, DRA asserts that the proposed G-PPPS rates violate § 453, which establishes that public utilities may not "as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage."

Discussion

DRA's reliance on § 890 and § 453 raises a serious jurisdictional question which cannot be resolved on this record. DRA argues that § 890 prohibits us from discounting the PPPS regardless of circumstances. However, there are compelling reasons to carve exceptions to that prohibition. For instance, Pub. Util. Code § 532, the modifier of § 453, provides that no public utility shall charge a different compensation for any commodity furnished than the rates specified in its schedules on file; but that "the commission may by rule or order establish such exceptions from the operation of this prohibition as it may consider just and reasonable as to each public utility." Pursuant to this authority this Commission has authorized numerous deviations from tariff rates.[10]

More particularly, § 740.4 authorizes discounts to encourage economic development.

> 740.4. (a) The commission shall authorize public utilities to engage in programs to encourage economic development.
> (b) Reasonable expenses for economic development programs, as specified in this section, shall be allowed, to the extent of ratepayer benefit, when setting rates to be charged by public utilities electing to initiate these programs.
> (c) Economic development activities may include, but not be limited to, the following:
> (1) Community marketing and development.
> (2) Technical assistance to support technology transfer.
> (3) Market research.
> (4) Site inventories.
> (5) Industrial and commercial expansion and relocation assistance.
> (6) Business retention and recruitment.
> (7) Management assistance.
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> (h) It is the intent of the Legislature that the Public Utilities Commission, in implementing this chapter, shall allow rate recovery of expenses and rate discounts supporting economic development programs within the geographic area served by any public utility to the extent the utility incurring or proposing to incur those expenses

[10] *See, e.g.,* D.95-10-033, 62 CPUC 2d 24, 51; D.93-07-051, 50 CPUC 2d 432, 437; D.93-10-072, 51 CPUC 2d 701; D.94-02-044, 53 CPUC 2d 281. D.96-09-104, 68 CPUC 2d 379, 383 ("Not every recognition of difference in rates to be charged by a public utility may be classified as unlawful since they may be taken in recognition of reasonable and just distinctions.")

> and rate discounts demonstrates that the ratepayers of the public utility will derive a benefit from those programs. Further, it is the intent of the Legislature that expenses for economic development programs incurred prior to the effective date of this chapter, which have not been previously authorized to be recovered in rates, shall not be subject to rate recovery.

We emphasize that Section 740.4(h) requires the Commission to allow recovery through rates of expenses and rate discounts supporting economic development programs to the extent that ratepayers "derive a benefit from those programs."

No party disputed the need for a discount rate to prevent Guardian from relocating its business out-of-state. However, given the conflict between the legislative demand to protect the PPPS and the legislative demand to encourage economic development ("the commission shall authorize public utilities …." § 740.4), we are reluctant to resolve the jurisdictional issue raised by DRA on a record limited to one utility and one customer. This issue affects all other gas utilities in the State, especially PG&E, and all large gas users, who should be given the opportunity to be heard. Therefore, we will bifurcate this application. We will authorize a rate discount equivalent to the discount proposed by SoCalGas and Guardian, but we will not allocate that discount to the component parts of the rate.[11] That allocation will be made in phase two of this application where we shall invite input from a broader class of interested parties. Should we decide that we should not discount the PPPS, we are prepared, in this

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[11] We expect the parties to use the proposed Agreement formula to determine the discount.

application, to discount the transportation rate below marginal costs. Regardless of our ultimate choice, neither SoCalGas nor the PPPS will be adversely affected because § 740.4(h) provides that any shortfall of revenue will be recovered from all ratepayers.

SoCalGas requests that the Commission approve the Agreement no later than April 13, 2006. Expedited consideration and approval is requested in order to permit Guardian to make its decision whether to relocate within the next few months. Guardian's Kingsburg facility has already operated beyond its expected life and is badly in need of replacement. Expeditious approval of the Agreement will enable Guardian to finalize plans to maintain its glass production operations within California with a new gas fired furnace. Delay in approval, however, will likely force Guardian to opt for relocation of its facility. The potential loss of Guardian with the concurrent impact of the loss of employment for 300 if resolution of this application is delayed leads us to conclude that a business with so much at stake is in a position where the threat of bypass is seriously imminent.

The Agreement will benefit SoCalGas customers by providing additional revenue, the net present value of which is estimated to range from $1.4 million to $3.5 million. Finally, by facilitating Guardian's transition to natural gas there will be a significant reduction in emissions and a corresponding improvement in air quality.

Categorization and Need for Hearings

In Resolution ALJ 176-3161 dated October 27, 2005 the Commission preliminarily categorized this application as ratesetting and preliminarily determined that hearings were necessary. All parties having waived evidentiary hearings, we find hearings are not necessary.

Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Robert Barnett is the assigned Administrative Law Judge in this proceeding.

Comments on the Draft Decision

The draft decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed by all parties. DRA has persuaded us to address the jurisdictional issue on a more complete record, as set forth in the decision.

Findings of Fact

1. Guardian operates a glass production facility in Kingsburg, California, that operates on fuel oil – not natural gas – and must either upgrade its Kingsburg facility to use clean-burning natural gas or relocate its manufacturing operation out of California.

2. Guardian has made clear that the difference in the cost of natural gas is a material factor in its decision whether to remain in California.

3. The proposed Agreement has a 15-year term which sets the gas service rate at the applicable tariff rate, subject to an escalating ceiling rate and floor rate; and offers a five-year declining discount to the public purpose program surcharge. The net present value of the CTM to SoCalGas customers is estimated to range from $1.4 million to $3.5 million.

4. The public and ratepayers will benefit from a discount rate to Guardian in the following manner:

   a. Approval will prevent the out-of-state relocation of a large California employer and will preserve the manufacturing jobs of approximately 300 employees. The state and local communities gain from the economic growth generated by business activity and low unemployment, and from maintenance of a stable tax base.

b. The amount that Guardian will pay are funds that would not otherwise be collected and will not be collected if Guardian elects to leave California.

c. The discount will benefit SoCalGas customers by providing additional revenue, the net present value of which is estimated to range from $1.4 million to $3.5 million.

d. By facilitating Guardian's transition to natural gas there will be a significant reduction in emissions and a corresponding improvement in air quality.

e. The transition to natural gas will permit fixed costs to be spread over a larger amount of throughput, thereby benefiting all ratepayers.

5. The bypass threat involved in this application is seriously imminent.

6. A discount from SoCalGas' otherwise applicable tariff is needed to prevent Guardian from relocating out-of-state. That discount should be the dollar equivalent of the discount provided in the proposed Agreement.

7. SoCalGas shall establish a memorandum account to track the payments made by Guardian and the shortfall from the otherwise applicable tariff.

Conclusions of Law

1. The long-term gas transportation agreement between Southern California Gas Company and Guardian Industries Corp. as modified by this decision is reasonable and should be approved.

2. This application is to remain open to consider whether the gas PPPS can be discounted.

3. The presiding ALJ shall request comments from interested parties regarding Commission authority to discount the gas PPPS.

4. After receiving comments, the SoGalGas-Guardian discount rate shall be allocated among one or more of its component parts.

O R D E R

IT IS ORDERED that

1. The long-term gas transportation agreement between Southern California Gas Company and Guardian Industries Corp. as modified by this decision is reasonable and is approved.

2. SoCalGas shall establish a memorandum account to track the payments made by Guardian and the shortfall from the otherwise applicable tariff.

3. Within 30 days after the effective date of this order Southern California Gas Company shall serve the Energy Division with: (1) a revised contract describing the dollar equivalent discount, and (2) a description of the memorandum account authorized by this decision.

4. This application is to remain open to consider whether the gas PPPS can be discounted.

5. The presiding ALJ shall request comments from interested parties regarding Commission authority to discount the gas PPPS.

This order is effective today.

Dated April 13, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH

JOHN A. BOHN
RACHELLE B. CHONG
Commissioners